## TABLE OF CONTENTS


PAGE

I—Objection to Jurisdiction ..... 1

The respondents object to the jurisdiction of this court because the State court has neither decided a federal question of substance not heretofore decided by the court, nor decided it in a way probably not in accord with applicable decisions of this court ..... 1

Point I—The action below was a proceeding in lieu of prerogative writ seeking to review the action of the Township officials and no jury trial is obtainable in such action ..... 4

Point II—No constitutional rights of Petitioner were invaded in the abatement of the nuisance herein complained of ..... 6

Conclusion ..... 8


### Cases Cited


Ewing v. Mytinger and Casselberry, 339 U. S. 594.... 7

Ex Parte Wall, 107 U. S. 265..... 5

North America Storage Co. v. Chicago, 211 U. S. 306 ..... 7

O'Neill v. State Highway Department, 40 N. J. 326 (S. C. 1963), 191 A. 2d 48..... 5

Utley v. City of St. Petersburg, 292 U. S. 106..... 7

PAGE

**United States Constitution Cited**

Fourteenth Amendment ..... 7

**New Jersey Constitution Cited**

Article 6, Section 5, Paragraph 4 ..... 5

**Statute Cited**

National Building Code ..... 7

**Rules Cited**

Rule 23 ..... 2

Rule 23 (4) ..... 4

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1969

**No. 1541**

ARAM AJAMIAN,

*Petitioner,*

*vs.*

THE TOWNSHIP OF NORTH BERGEN IN THE COUNTY OF HUDSON, and MILTON J. MUSS,

*Respondents.*

**On Petition for Writ of Certiorari to the Supreme Court of New Jersey**

## BRIEF IN OPPOSITION

### I

### Objection to Jurisdiction

**The respondents object to the jurisdiction of this court because the State court has neither decided a federal question of substance not heretofore decided by the court, nor decided it in a way probably not in accord with applicable decisions of this court.**

While the refernces to the official and unofficial reports of the opinions delivered in the courts below are correctly referred to and appended to the Petition, the statement of the questions presented for review, as well as the statement of the case, contain allegations which are not supported by the record below, many of them being in direct conflict with the expressed findings of the trial court in the Opinion annexed to the Petition as Appendix A, and, in particular, pages 53a to 57a of the said Petition. The Court's conclusion as to the facts is succinctly stated in its Opinion, as follows:

> "The court finds that this building, in the conditions described, constituted a 'public nuisance'." (56a)

A question of fact is thus presented which does not raise a federal question, otherwise every defeated litigant could claim that he has been victimized by lack of due process. For instance, the trial court's Opinion, Appendix A, and in particular pages 55 *et seq.*, indicates that Petitioner, over a period from July 8, 1966 to November 8, 1966, received repeated notices from sundry Township officials, and that his so-called "forcible closing of an apartment building by a 24 hour notice without a hearing or opportunity for a hearing", which is referred to throughout the Petition, as the prime basis for his alleged constitutional question, is based, not on fact, but fiction.

Furthermore, his Petition otherwise fails to comply with Rule 23 in that it is so discordant and repetitious that it can hardly be said to contain a concise statement of the case containing the facts material to the consideration of the question presented as required by subdivision (e), nor a direct and concise argument amplifying the reasons relied on for the allowance of the writ.

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To illustrate, under the Petitioner's heading "Questions Presented for Review", page 3, Petitioner expresses question No. 6 as follows:

> "6. Whether the totality of the effect of the New Jersey Administrative proceeding and the failure of the New Jersey Courts to scrutinize and relieve the impact of it deprive petitioner of property without due process of law."

The meaning of this question is obscure, but the Petitioner elucidates it under his Point VI on page 47a of the Petition, and better than anything else, it is a fair reflection of the Petition and its merits. Hence, it will be repeated here in full:

> *"Reasons for granting the writ.*
>
> The trial Court in case of prerogative writ as in this case, sits appellative tribunal to see if constitutional question is involved in regards to procedure to see if petitioner is deprived of his constitutional rights. The Appellate Division upheld the trial Court without an opinion of its own, stating for the reasons of the trial court. The Supreme Court dismissed the appeal to its Court by the Chief Justice without a hearing.
>
> The Courts of New Jersey by depriving this plaintiff of his Constitutional rights just because he is a New York lawyer and not a New Jersey lawyer or to help the officials in power of the Township of North Bergen for political reasons, or because the Judges sitting in this case knew or are personal friends of the Township attorney.
>
> The presiding Judge of the Appellate Division had a conflict of interest having been the Administrator for creditors heretofore when he was a

lawyer, and when he had charge of this apartment building and his excessive fee was opposed by this petitioner.

This decision is doing great harm to the property owners of New Jersey and to all property owners of the United States, because this decision of the highest court of New Jersey may now be used any official as the law of New Jersey—the law of the land—summarily close up by 24 hour notice without any opportunity to be heard, any business and building just because the official does not like its owner for political reason, money gain to himself or for any other personal reason." (47a)

This scandalous summation, wholly unsupported by anything in the record, or otherwise, should be sufficient, under Paragraph 4 of Rule 23 of this court, to require a denial of his Petition.

However, the Respondents will attempt to extract from this Petition the grounds upon which the Petitioner appears to rely upon and meet these grounds on their merits.

## POINT I

**The action below was a proceeding in lieu of prerogative writ seeking to review the action of the Township officials and no jury trial is obtainable in such action.**

For more than a century, under the New Jersey Constitution of 1844, the courts of New Jersey had reviewed acts of public officials by the Writ of Certiorari, without a jury. In 1947, prerogative writs were superseded, and in lieu thereof, hearing was to be afforded in the Su-

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perior Court in the manner prescribed by the Supreme Court, Article 6, Section 5, Paragraph 4.

The Rules of the New Jersey Supreme Court provide:

"4:88-2. Action in Law Division

Review, hearing and relief heretofore available by prerogative writs and not covered by Rules 4:88-7, or 4:88-8, or 4:88-10 shall be afforded by a civil action at law in the Law Division of the Superior Court. Such action shall be tried before a single judge without jury, except in any case where a jury trial would have heretofore been available and demand therefor is filed within 10 days of the service of the complaint."

The reference in the Rule to the clause "where a jury trial would have heretofore been available", refers only to the prerogative writs of mandamus and *quo warranto,* but not certiorari, since in certiorari a jury trial would not have heretofore been available. Even in mandamus such right is no longer available. See *O'Neill* v. *State Highway Department,* 40 N. J. 326 (S. C. 1963), 191 A. 2d 48.

Petitioner never demanded a jury trial and selected a forum where no jury trial was available.

The Constitution of New Jersey, like the United States Constitution, recognizes the right to a jury trial in certain instances, but long ago it was decided by this court that "it is a mistaken idea that due process of law requires a plenary suit and a trial by jury, in all cases where property or personal rights are involved". *Ex Parte Wall,* 107 U. S. 265, at page 289. It refers to courts of chancery, bankruptcy, probate, admiralty, etc., and concludes with the observation:

"In all cases, that kind of procedure is due process of law, which is suitable and proper to the nature of the case, and sanctioned by the established customs and usages of the courts."

## POINT II

**No constitutional rights of Petitioner were invaded in the abatement of the nuisance herein complained of.**

The record amply established the existence of a nuisance, which, both under the laws of New Jersey and the common law, was subject to summary abatement.

The Petitioner's complaint appears to be grounded on (a) lack of notice, and (b) denial of hearing.

**(a)**

The Petitioner had more than enough notice. The record itself, as well as the trial court's findings, clearly disclosed the Petitioner was given ample opportunity over a period of four months to abate the nuisance resulting from the intolerable conditions which existed in this tenement house.

During this period he contumaciously refused to remedy the conditions and the vacation of the premises was a last resort, since, as pointed out by the trial court, there was no intention to demolish the building. If, as Petitioner claims, it has since deteriorated, that is due solely to the Petitioner's desire to vindicate his "constitutional rights" rather than make the premises habitable.

**(b)**

The Petitioner has had a full hearing on the merits, which is all that he was entitled to. As the trial court

was careful to point out, the proceedings did not involve the demolition of his building which would be irrevocable, but rather its temporary vacation pending such corrective measures as would abate the nuisance.

It is elementary that the exact point in the proceedings when the hearing takes place raises no constitutional question, and it is at most a question of procedure. *Utley* v. *City of St. Petersburg,* 292 U. S. 106; *Ewing* v. *Mytinger and Casselberry,* 339 U. S. 594.

This is especially true in the case of public nuisances and the compelling necessity of abating same, in the interest of the public health and safety, at the earliest possible moment, leaving to the party allegedly injured by such action, his redress at a subsequent hearing, if indeed he is entitled to such redress.

The situation here is in fact controlled by the case of *North America Storage Co.* v. *Chicago,* 211 U. S. 306, which incidentally, the trial court cites in support of its determination (68a).

An exhaustive four-day trial on the merits showed that Petitioner was not entitled to any redress. The Petitioner's reference to the inviolability of contracts, or the more subtle and recent concept of "vested rights" under the due process clause of the Fourteenth Amendment, are not even remotely involved. No court, federal or state, has ever said that anyone has a vested right to continue a public nuisance.

The reference by the Petitioner to the National Building Code, which embraces the Electrical Code adopted by the Township of North Bergen in 1966, is difficult to understand, since the trial court itself did not make the requirements of this Code the basis of its decision. In fact the trial court expressly observed:

> "Since the subject building was erected many years before 1966, it cannot be said that the National Building Code may be used as authority for the summary action taken herein. Nor can defendants rely on plaintiff's failure to appeal to the Board of Appeal provided by Sec. 107.6 of that code, as constituting a waiver of a right to a hearing." (57a)

Finally, other tangential references to unequal application of the local laws, or the taking of private property for *public use*, without compensation, are so removed from any established fact in this case as to require no further discussion.

## CONCLUSION

**It is respectfully submitted that the Petition for a Writ of Certiorari should be denied.**

NICHOLAS S. SCHLOEDER,
*Attorney for Respondents.*